Supreme Court, U.S.
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No. 88-1724

In the Supreme Court of the United States

OCTOBER TERM, 1988

State of Arkansas ..... *Petitioner*

V.

Garland Maurice Gibson ..... *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

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QUESTION PRESENTED

I.

WHETHER THE SIXTH AMENDMENT REQUIRES THAT A JUDGE MUST EXPLAIN TO A DEFENDANT THE DANGERS OF SELF-REPRESENTATION IN ORDER FOR THE DEFENDANT TO KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO COUNSEL.

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UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in part:

> "In all criminal prosecution, the accused shall enjoy the right . . . to have Assistance of Counsel for his defense."

The Fourteenth Amendment to the United States Constitution provides in part:

> "[N]or shall any state deprive any person of life, liberty or prosperity, without due process of law, . . . "

STATEMENT OF THE CASE

The Petitioners statement failed to include the reasoning of the Arkansas Supreme Court's decision which was that at no time did the trial judge determine that an intelligent waiver of counsel was made and it was clear that there was no waiver of counsel by the respondent. The Court reversed the trial judge in order to avoid manifest prejudice and injustice to the respondent who failed to receive warning of the consequences of foregoing counsel.

ARGUMENT

It is the argument of the petitioner that this Court's opinion in *Patterson v. Illinois*, 487 U.S. ____,108 S.Ct. 2389, 101 L.Ed.2d 261 (1988) does not establish the requirement that the trial judge explain to an accused that he is entitled to counsel and the possible consequences of a decision to forego the aid of counsel. This position presents the question of how it could be determined that a defendant would know these facts and understand the importance of counsel and the consequences of not having counsel without the explanation being given by the Court.

The respondent fails to see any conflict between the opinion of this Court as espoused in *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), and the more recent *Patterson* case. In *Faretta* this Court noted that a defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with his eyes open.' " 422 U.S. at 835, 95 S.Ct. at 2541, 45 L.Ed.2d at 582. Though several Federal Circuit Courts of Appeal discuss the meaning and implications of *Faretta* and apply them somewhat differently in certain cases, the basic fact remains that the minimum requirements set out in *Faretta* and *Patterson* must be met in order for an accused to knowingly and intelligently waive his Sixth Amendment right to counsel. In the case at bar, the Supreme Court of Arkansas rightly held that there was no evidence that these minimum requirements were met and therefore the reversal.

The petition for writ of certiorari should be denied.

Respectfully submitted,

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